



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

James Lamb
Sandler Reiff Lamb Rosenstein & Birkenstock, P.C.
1090 Vermont Ave NW, Suite 750
Washington DC 20005

FEB 07 2019

RE: MUR 7404
Andre Carson for Congress and
Timothy Moriarty, as treasurer

Dear Mr. Lamb:

On June 11, 2018, the Federal Election Commission ("Commission") notified your clients of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). On February 4, 2019, based upon the information contained in the complaint and information provided by respondents, the Commission decided to find no reason to believe the allegations that Andre Carson for Congress and Timothy Moriarty in his official capacity as treasurer violated provisions of the Act. The Commission then closed its file in this matter. A copy of the Factual and Legal Analysis, which more fully explains the basis for the Commission's decision, is enclosed.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). If you have any questions, please contact Kristina Portner, the attorney assigned to this matter, at (202) 694-1518.

Sincerely,

Lisa J. Stevenson
Acting General Counsel

BY: Jeff S. Jordan
Assistant General Counsel

Enclosure:
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Andre Carson for Congress and MUR 7404
Timothy Moriarty in his official capacity as treasurer,
Indianapolis Star,
Indianapolis Recorder, and
Radio One of Indiana

This matter was generated by a Complaint alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations by Andre Carson for Congress and Timothy Moriarty in his official capacity as treasurer ("Committee"), Indianapolis Star, Indianapolis Recorder, and Radio One of Indiana (collectively, the media entities are referred to as the "Media Respondents").¹ It was scored as a low-rated matter under the Enforcement Priority System, by which the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue.

The Complainant alleges that Respondents conspired to exclude him from radio interviews that included other Democratic candidates.² Complainant further alleges that the Respondents coordinated their news coverage to stop Complainant from raising misconduct

¹ The Indianapolis Star is a newspaper that provides print and website publications that are available to the general public. Indianapolis Star Resp. at 3-4 (June 28, 2018); *see also* Indianapolis Star: About the Indianapolis Star, available at <http://static.indystar.com/cn/aboutus/>. The Indianapolis Recorder is a newspaper that provides print and website publications that are available to the general public. Indianapolis Recorder Resp. at 3-4 (Sept. 20, 2018); *see also* Indianapolis Recorder: About Us, available at <http://www.indianapolisrecorder.com/site/about.html>. Radio One of Indiana operates four radio stations that are available to the general public in the Indianapolis market. Radio One Resp. at 1 (July 3, 2018). Community Connections, which is a focus of the complaint (Compl. at 2), is a local news and community affairs program aired on one of Radio One's stations. *Id.*

² Compl. at 1 (June 4, 2018). The Complainant also alleges a misuse of an FCC license by Urban One of Indiana, WTLC 106.7 and A.M. 1310. This allegation is outside the Commission's jurisdiction and, therefore, this Office has not addressed these allegations. The Complaint is also addressed to the Federal Communications Commission and the Internal Revenue Service.

1 allegations against Carson, and speculates that the Committee may have paid the Media
2 Respondents to do so.³

3 The Indianapolis Star and Indianapolis Recorder respond that their activity is covered by
4 the media exemption.⁴ Radio One of Indiana responds that Complainant did not appear on its
5 Community Connection program because he did not contact the show's producers to request an
6 appearance.⁵ Respondents further deny that they conspired against Complainant,⁶ and the
7 Committee specifically denies paying the Media Respondents to influence their news coverage.⁷

8 The Act and Commission regulations exclude from the definitions of "contribution" and
9 "expenditure" the cost incurred in covering or carrying a news story, commentary, or editorial by
10 any broadcasting station, newspaper, Web site, magazine, or other periodical publication,
11 including any Internet or electronic publication, unless such facilities are owned or controlled by
12 any political party, political committee, or candidate.⁸

³ *Id.* at 3.

⁴ Indianapolis Star Resp. at 1-4; Indianapolis Recorder Resp. at 2-5; *see also* Committee Resp. at 4-5 (Aug. 8, 2018).

⁵ Radio One Resp. at 2, Ex. A at 1.

⁶ Radio One Resp. at 2; Indianapolis Recorder Resp. at 2; Committee Resp. at 1.

⁷ Committee Resp. at 1-2. The Committee also asserts that it paid the usual and normal charge for advertising in the Indianapolis Recorder and on Radio One's stations. *Id.* at 2-4.

⁸ 52 U.S.C. § 30101(9)(B)(i); *see also* 11 C.F.R. §§ 100.73 (excluding bona fide news coverage from the definition of "contribution"); 100.132 (same as to the definition of "expenditure"). The Commission uses a two-step analysis to determine whether the media exemption applies. First, the Commission considers whether the entity in question is a media entity, focusing on whether the entity produces, on a regular basis, a program that disseminates news stories, editorials, and/or commentary. Factual and Legal Analysis at 5-6, MUR 7206 (Bonneville International Corp., *et al.*) ("Bonneville F&LA"); Advisory Op. 2016-01 (Ethiq) at 2 ("AO 2016-01"); Advisory Op. 2010-08 (Citizens United) at 2 ("AO 2010-08"). Second, the Commission considers two factors in determining the scope of the exemption: (1) whether the press entity is owned or controlled by a political party, political committee, or candidate; and, if not, (2) whether the media entity is acting as a media entity in conducting the activity at issue (*i.e.*, whether the entity is acting in its "legitimate press function"). Bonneville F&LA at 5; AO 2016-01 at 3; AO 2010-08; AO 2010-08 at 3. With respect to the second factor, when determining whether an entity is engaging in a legitimate media function, the Commission examines (1) whether the entity's materials are available to the general public; and (2) whether they are comparable in form to those ordinarily issued by the entity. Bonneville F&LA at 6-7; AO 2016-01 at 3; AO 2010-08 at 6.

1 Complainant's allegation that the Committee conspired with and paid the Media
2 Respondents to influence their news coverage is speculative and denied by the Respondents. In
3 addition, the media exemption covers the Media Respondents' activity. The available
4 information shows that the Media Respondents regularly provide news coverage, thus, they are
5 media entities. In addition, there is no information to suggest that the Media Respondents are
6 owned or operated by a political party, political committee, or candidate.⁹ Finally, they were
7 operating within their legitimate press function when they provided the news coverage at issue in
8 the Complaint.¹⁰ Therefore, the Commission finds no reason to believe that Indianapolis Star,
9 Indianapolis Recorder, or Radio One of Indiana violated the Act or Commission regulations.

10 Since the news coverage is not considered a contribution or expenditure under the Act or
11 Commission regulations, the Commission finds no reason to believe that Andre Carson for
12 Congress and Timothy Moriarty in his official capacity as treasurer violated the Act or
13 Commission regulations by accepting a prohibited or excessive contribution.

⁹ The Indianapolis Star and Indianapolis Recorder specifically deny that they are owned or operated by a political party, political committee, or candidate. Indianapolis Star Resp. at 4; Indianapolis Recorder Resp. at 3.

¹⁰ The Commission has previously held that "on-air interviews of candidates also fall within the bounds of the press exemption, and therefore, the interview of [a candidate] is a legitimate press function of a media entity." Factual & Legal Analysis at 8-9 (Meakem Communications Company LLC), MUR 6089 (People with Hart); *see also* Factual & Legal Analysis at 5-7, MUR 6111 (WOSU Public Media) (public radio call-in show that featured some political candidates when excluding others constituted legitimate press activity).